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Supreme Court of the United States

October Term, 1974

No. 74-1573

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA; DISTRICT 2, UNITED MINE WORKERS OF AMERICA; AND LOCAL NO. 998, UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

ISLAND CREEK COAL COMPANY,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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No. ———

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA; DISTRICT 2, UNITED MINE WORKERS OF AMERICA; AND LOCAL NO. 998, UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

ISLAND CREEK COAL COMPANY,

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

The petitioners, International Union, United Mine Workers of America; District 2, United Mine Workers of America; and Local No. 998, United Mine Workers of America, respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit entered in this proceeding on January 14, 1975.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at 507 F.2d 650 and is appended to this petition as Appendix A. The temporary re-

straining order issued by the United States District Court for the Western District of Pennsylvania is appended to this petition as Appendix B. The preliminary injunction issued by the United States District Court for the Western District of Pennsylvania together with Findings of Fact and Conclusions of Law is appended to this petition as Appendix C.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The decision of the United States Court of Appeals was entered on January 14, 1975. A timely petition for rehearing *en banc* was denied on February 12, 1975. The time for filing this petition was extended by Mr. Justice Brennan from May 13, 1975 to and including June 15, 1975.

QUESTION PRESENTED

If a union enters into a collective bargaining agreement establishing a mandatory arbitration procedure and then later engages in a work stoppage *solely* out of deference to a foreign picket line at the place of employment, does a federal district court have authority to enjoin the stoppage or is it precluded from granting injunctive relief by the Norris-LaGuardia Act and this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970).

STATUTES INVOLVED

This case involves Section 4 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. §104, as well as Sections 7, 8(a)(1) and (3), and 301(a) of the National Labor Relations Act, as amended, 61 Stat. 156, 29 U.S.C. §§157, 158, and 185(a). These provisions are appended as Appendix D.

STATEMENT

Respondent Island Creek Coal Company operates the Bird No. 2 and No. 3 Mines located in Somerset County,

Pennsylvania. The coal miners employed at these mines are members of the United Mine Workers of America (hereafter "UMWA"), its District 2, and Local Union No. 998. The UMWA and Island Creek were in April 1974 signatories to the National Bituminous Coal Wage Agreement of 1971. That Agreement did not contain an express no-strike clause,[1] nor did it contain any language waiving or otherwise relating to employees' rights to honor picket lines of any kind. The 1971 Agreement did, however, contain a provision for final and binding arbitration of disputes arising thereunder.

Beginning on April 11, 1974, employees at Bird No. 2 and No. 3 Mines did not report for work. Their failure to work was not the result of any disagreement or dispute with Island Creek, but was solely caused by the presence of pickets at the mine entrances who were not members of Local Union 998, and were not employees of Island Creek.

On April 12, 1974, Island Creek filed a complaint in the United States District Court for the Western District of Pennsylvania alleging jurisdiction under Section 301 of the Labor-Management Relations Act, 29 U.S.C. 185, and seeking both a temporary restraining order and a preliminary injunction. District Judge Barron P. McCune immediately entered a temporary restraining order directing Local Union 998, its officers and members to cease "[e]ngaging or continuing to engage in a strike or other work stoppage" and "to report for work across any picket lines existing at or which may be established at Plaintiff's Bird No. 2 and No. 3 Mines. . . ." (App. B, *infra,* App. 12, 13).

Thereafter, a preliminary injunction hearing was held, and the Court entered its findings and conclusions and ordered that the temporary restraining order be continued as a preliminary injunction. The Court expressly found that

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[1] To the contrary, in two parts of the Agreement, all previous no-strike clauses were expressly abrogated and disavowed.

the employees had refused to work solely because of the presence of foreign pickets. It held that the work stoppage itself—the refusal to cross a picket line—was arbitrable, and concluded that the stoppage violated the arbitration clause.

A divided panel of the Court of Appeals for the Third Circuit affirmed. The majority (Circuit Judges Gibbons and Weis) reasoned that even though the bargaining agreement did not contain any language restricting employees' rights to honor picket lines, still, if a miner had been discharged for honoring a picket line, the discharge would have been arbitrable. The majority went on to conclude that since its hypothetical discharge would have been arbitrable, the issue whether employees could refuse to cross a foreign picket line was likewise arbitrable. The majority did not suggest, however, that the work stoppage had been caused by, was the result of, or was "over" any arbitrable dispute.

Judge Adams, who had dissented from the Third Circuit *en banc* decision in *NAPA Pittsburgh* v. *Automotive Chauffeurs,* 502 F.2d 321 3d Cir., *cert. denied,* 43 U.S.L.W. 3330 (Dec. 10, 1974), again dissented for reasons set forth in the earlier case. He also emphasized:

> There is no express no-strike clause in the collective bargaining agreement present in this case and no direct or indirect reference to secondary picketing. Accordingly, the majority opinion in this case constitutes an extension of the rule in *NAPA.* (507 F.2d at 654; App. A, *infra,* App 8).

Finally, Judge Adams observed:

> I am concerned that if the courts continue to interpret the national policy favoring arbitration along the lines set forth by the majority here and in *NAPA,* then by a process of attrition, the salutary rule established after a long and sometimes bitter struggle by the Norris-LaGuardia Act will be imperceptibly chipped away

> until it has lost a substantial portion of its vitality. The Supreme Court specifically eschewed such an intent. (507 F.2d at 654; App. A, *infra,* App. 9).

The UMWA's petition for rehearing and suggestion for rehearing *en banc* was denied.

REASONS FOR GRANTING THE WRIT

I. THE COURTS OF APPEALS ARE SHARPLY DIVIDED ON THE ISSUE WHETHER THIS COURT'S "NARROW" HOLDING IN *BOYS MARKETS, INC.* V. *RETAIL CLERKS UNION,* 398 U.S. 235 (1970), SHOULD BE EXTENDED TO AUTHORIZE INJUNCTIONS AGAINST EMPLOYEES WHO HAVE CEASED WORK, NOT BECAUSE OF ANY DISPUTE WITH THEIR EMPLOYER, BUT SOLELY BECAUSE OF THE EXISTENCE OF A FOREIGN PICKET LINE AT THEIR PLACE OF EMPLOYMENT.

No less than five Circuits have wrestled with the issue whether work stoppages resulting from the presence of foreign pickets at the place of employment are enjoinable under this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970). The issue is one on which the Courts of Appeals are sharply divided. The Courts of Appeals for the Third,[2] Fourth,[3] and Seventh[4] Circuits have held that such work stoppages are enjoinable

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[2] Compare *Island Creek Coal Co.* v. *United Mine Workers of America, et al.,* 507 F.2d 650 (3d Cir., 1975); *NAPA Pittsburgh, Inc.* v. *Automotive Chauffeurs,* 502 F.2d 321 (3d Cir., 1974), *cert. denied,* 43 U.S.L.W. 3330 (Dec. 10, 1974), with *Parade Publications, Inc.* v. *Philadelphia Mailers Union,* 459 F.2d 369 (3d Cir., 1972).

[3] *Armco Steel Corp.* v. *United Mine Workers of America,* 505 F.2d 1129 (4th Cir., 1974) (Petition for writ of certiorari filed simultaneously herewith); *Monongahela Power Co.* v. *Local 2332, Int'l. Bhd. of Electrical Workers,* 484 F.2d 1209 (4th Cir., 1973); *Pilot Freight Carriers* v. *Int'l. Bhd. of Teamsters,* 497 F.2d 311 (4th Cir.), *cert. denied,* 42 L.Ed.2d 107 (1974); *Wilmington Shipping Co.* v. *Int'l. Longshoremen's Assn.,* 86 LRRM 2846 (4th Cir.), *cert. denied,* 42 L.Ed.2d 296 (1974).

[4] *Inland Steel Co.* v. *Local Union 1545, United Mine Workers of America,* 505 F.2d 293 (7th Cir., 1974).

under *Boys Markets*. The Courts of Appeals for the Second[5] and Fifth[6] Circuits have held to the contrary that such work stoppages do not arise "over" any underlying work place grievance between the employer and its employees and therefore are not enjoinable under *Boys Markets*. Notably, the decisions holding such work stoppages enjoinable have frequently provoked sharp and strongly worded dissenting opinions.[7]

Likewise, the question of the enjoinability of foreign-picket work stoppages has arisen repeatedly in the District Courts. The reported District Court decisions are divided, but weigh heavily against the granting of injunctive relief in this situation.[8]

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[5] *Buffalo Forge Co.* v. *United Steelworkers of America,* 89 LRRM 2303 (2d Cir., 1975) (Appendix E).

[6] *Amstar Corp.* v. *Amalgamated Meat Cutters & Butcher Workmen,* 468 F.2d 1372 (5th Cir., 1972).

[7] See dissenting opinion of Judge Adams in this case (App. A, *infra,* App. 7); dissenting opinions of Judge Hunter and Adams in *NAPA Pittsburgh, supra,* 502 F.2d at 324, 333; dissenting opinion of Judge Fairchild in *Inland Steel, supra,* 505 F.2d at 300; and the concurring opinion of Judge Adams in *Wilmington Shipping, supra,* 86 LRRM at 2847. Judge Adams of the Third Circuit, sitting by designation on the Fourth Circuit concurred out of deference to binding Fourth Circuit authorities, though stating his personal view that the contrary position stated in *Amstar, supra,* represents the preferable rule of law.

[8] Decisions against enjoinability: *Stokely-Van Camp, Inc.* v. *Thacker and Cannery Warehousemen, etc.,* 89 LRRM 2145 (W.D. Wash., 1975); *12th and L* v. *Operating Engineers,* 88 LRRM 2572 (D.D.C., 1975); *Plain Dealer Pub. Co.* v. *Local 53, ITU,* 88 LRRM 2155 (N.D. Ohio, 1974); *Pilot Freight Carriers, Inc.* v. *Teamsters Local 560,* 373 F.Supp. 19, 26-27 (D.N.J., 1974); *Carnation Co.* v. *Teamsters Local 949,* 86 LRRM 3012 (S.D. Tex., June 28, 1974); *General Cable Corp.* v. *The International Brotherhood of Electrical Workers, Local Union 1644, AFL-CIO,* 331 F.Supp. 478 (D. Md., 1971); *Simplex Wire and Cable Co.* v. *Local 2208 of the International Brotherhood of Electrical Workers, AFL-CIO,* 314 F.Supp. 885 (D.N.H., 1970).

Decisions supporting injunctions: *Barnard College in the City of New York* v. *Transport Workers Union of America, AFL-CIO,* 372 F.Supp. 211 (S.D.N.Y., 1974); *Bethlehem Mines Corp.* v. *UMWA,* 375 F.Supp. 980 (W.D. Pa., 1974).

If there were need for further indication that the division of lower court authorities in this issue is continuing to spawn, that indication is provided by the Second Circuit's recent decision in *Buffalo Forge* (May 1, 1975), chronicling the parade of decisions on both sides and coming down—as stated above—against enjoinability. Obviously, the forest of conflicting decisions and lack of clear direction from this Court seriously complicates the task of District Judges confronting the issue for the first time in those Circuits which have not yet spoken, *see Plain Dealer Pub. Co., supra,* and makes virtually a mockery of any concept of uniformity in the application of federal labor law. There should be little doubt that the issue presented by this petition is one that so amply satisfies the considerations stated in Rule 19(b) of this Court as practically to command that certiorari be granted and that the issue be definitively resolved.

II. THE DECISION OF THE COURT BELOW IS AT ODDS WITH THIS COURT'S DECISION IN *BOYS MARKETS, INC.* V. *RETAIL CLERKS UNION,* 398 U.S. 235 (1970), AND WITH THE CONSISTENT POLICY OF THIS COURT TO ACCOMMODATE AND HARMONIZE CONFLICTING FEDERAL LABOR STATUTES.

The work stoppages herein arose simply because of the appearance of foreign picket lines at the mine sites. In the course of the lower court proceedings, respondent never even suggested that the work stoppage arose out of any underlying grievance, complaint or dispute between it or any of its employees. In fact, it has conceded throughout that there was no such dispute. Nevertheless, the Court of Appeals held that the work stoppage was one which should have been enjoined under Section 301 of the Labor-Management Relations Act, 29 U.S.C. 185, and this Court's decision in *Boys Market, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970). Petitioners submit that the lower court's conclusion involves a basic misunderstanding of both the holding and rationale of *Boys Markets.*

In *Boys Markets* the Court expressly adopted the dissenting opinion of Mr. Justice Brennan in *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 215 (1962), as the correct view for harmonizing the seemingly absolute bar on federal labor injunctions with the strong federal policy of promoting labor arbitration. Mr. Justice Brennan's *Sinclair* dissent acknowledged that Congress had specifically refrained from repealing Norris-LaGuardia:

> [t]he legislative history of §301 . . . shows that Congress considered and rejected 'the advisability of repealing the Norris-LaGuardia Act insofar as suits based upon breach of collective bargaining agreements are concerned,' . . . there is no question here of 'repeal' (370 U.S. at 220).

Accordingly, Mr. Justice Brennan looked toward an accommodation giving due regard to the anti-injunction policies of Norris-LaGuardia as well as the pro-arbitration policies of Taft-Hartley:

> Congress, clearly, had no intention of abandoning wholesale the Norris-LaGuardia policies in contract suits; but it does not follow that §301 is not the equal of §4 in cases which implicate both provisions. (370 U.S. at 223).

It was with this full understanding of the legislative history of §301 that the *Sinclair* dissent articulated the rationale that later became the majority opinion in *Boys Markets:*

> A District Court entertaining an action under §301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition

> of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance. (398 U.S. at 254, quoting 370 U.S. at 228) (Emphasis in original).

The exception to the proscriptions of Norris-LaGuardia was carefully limited to strikes "over" arbitrable disputes—to situations where unions sought to settle work place grievances by economic pressure instead of submitting them to arbitration:

> Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act. We deal only with the situation in which a collective-bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance. (398 U.S. at 253-254)

Plainly, the rationale of *Boys Markets* and its progeny[9]

[9] This Court followed the rationale of *Boys Markets* in *Gateway Coal Company* v. *United Mine Workers of America,* 414 U.S. 368 (1974) which involved a work stoppage arising out of a dispute about the safety of the employees' working conditions. Though the Union contended that safety disputes of the character presented in that case were expressly excluded from arbitration under the applicable collective bargaining agreement, the Court held to the contrary. All conceded that the underlying cause of the work stoppage was safety conditions in the work place, and so, once the Court determined that the dispute was required to be resolved by arbitration, it simply applied the *Boys Markets* holding and found that the work stoppage had been properly enjoined.

is that injunctive relief is available to protect the efficacy of arbitration where parties to a collective bargaining agreement have agreed upon arbitration as the means of settling disputes between them under that agreement. The point is simply this: resort to economic measures by either party as a means of seeking resolution of a work place grievance which it has agreed to settle by arbitration would undercut the utility of arbitration as a means of settling labor disputes short of economic warfare. The appropriateness of injunctive relief hinges upon its function in preventing resort to economic warfare over disputes which by agreement are to be finally resolved through arbitration.

Obviously, this is a rationale that can apply only to work stoppages resorted to as a means of coercing an employer to give in to the employees' position regarding an underlying dispute between them. It does not apply here.

The Court below recognized that the work stoppage herein was caused, not by any underlying dispute between respondent and its employees, but by the appearance of foreign picket lines. It reasoned that the refusal of the employees to cross the foreign picket line itself posed an arbitrable issue, and, on this basis alone, held that an injunction should have issued. It did not—and it obviously *could not*—say that the work stoppage was "over" or was caused by a dispute between respondent and its employees, because there was no such dispute. Nor did it or could it say that the employees' refusal to cross the foreign picket line was intended to make respondent accede to anything—to their right to honor picket lines or to any other right which they might conceivably claim under the collective bargaining agreement.

In fact, the lower court's holding is simply incompatible with this Court's avowal of the narrowness of *Boys Markets* and the vitality of the Norris-LaGuardia Act. *Boys Markets* applies when the arbitrable grievance causes the stoppage, not when the stoppage itself creates the only dispute said to

be arbitrable. If a refusal to cross a foreign picket line calls for injunctive relief on the ground that it poses an arbitrable issue (i.e., the question whether the stoppage itself is permissible), so would any other work stoppage whatsoever. Judge Smith in *Buffalo Forge* v. *United Steelworkers of America, supra,* eloquently underscored the importance of the distinction between cases where the strike sought to be enjoined was "over a grievance" and cases where the strike was "simply a manifestation of the striking workers' deference to other employees' picket lines:"

> This distinction is crucial in light of the need, recognized in *Boys Markets* and the *Sinclair Refining* dissent, to reconcile the anti-injunction policy of Norris-LaGuardia with the pro-arbitration policy of the later act. If a strike not seeking redress of any grievance is enjoinable, then the policy of Norris-LaGuardia is virtually obliterated. For since a no-strike provision, if not in fact present in the employment contract, will be implied where the agreement sets up mandatory arbitration machinery, *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *Lucas Flour Co.,* 369 U.S. 95, 104-06 (1962), it is, as the Fifth Circuit has concluded, 'difficult to conceive of any strike which could not be so enjoined.' *Amstar Corp.* v. *Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO,* 468 F.2d 1372, 1373 (5th Cir. 1972). Undue expansion of the 'narrow' holding in *Boys Markets* may be avoided, on the other hand, by proper attention to the actual threat posed by strikes not over grievances with the employer to the policies promoted by §301 (a). A strike not seeking to pressure the employer to yield on a disputed issue is not an attempt to circumvent arbitration machinery established by the collective bargaining agreement. Accordingly, it does no violence to the federal pro-arbitration policy to require federal courts to refrain from enjoining such

strikes. *See NAPA Pittsburgh, Inc.* v. *Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926,* 502 F.2d 321, 330-31 (3d Cir. 1974) (*en banc*) (Hunter, J. & Seitz, C.J., dissenting), *cert. denied,* 43 U.S.L.W. 3328 (Dec. 9, 1974); *Inland Steel Co.* v. *Local Union No. 1545, United Mine Workers of America,* 505 F.2d 293, 300-01 (7th Cir. 1974) (Fairchild, J., dissenting). (89 LRRM at 2305-2306)

Boys Markets contemplated only a narrow exception to Norris-LaGuardia for those work stoppages caused by underlying arbitrable disputes. The holding of the Court of Appeals necessarily involves an approach which is far more sweeping, extending to every work stoppage which itself can be characterized as posing an arbitrable issue, regardless whether it arises "over" an arbitrable dispute. In the words of Judge Fairchild, such a holding would "permit the narrow exception created by *Boys Markets* to subsume the rule." *Inland Steel Co.* v. *Local Union 1545, United Mine Workers of America, supra,* 505 F.2d at 301.

As observed by Judge Hunter, dissenting in *NAPA Pittsburgh, supra,* the misapplication of *Boys Markets* to foreign picket stoppages does no service whatsoever to pro-arbitration policies:

> [A] broader reading of the *Boys Markets* holding would extend it into areas where the policy considerations that dictated that decision simply do not operate. If the arbitrable dispute is not a 'cause' of the work stoppage, then a concession on that dispute by the employer will not help to end the work stoppage. Under these circumstances, the work stoppage will exert no pressure on the employer to resolve the arbitrable issue short of arbitration. Thus, if this basic cause-effect relationship between the arbitrable issue and the strike is not present, the strike will not discourage arbitration

> and the policy that favors the arbitration of labor disputes will not be furthered by the issuance of an injunction. (502 F.2d at 330-31).

The essential distinction is further amplified by Judge Adams in his dissent filed in the Court below:

> It was one thing to further the policy favoring arbitration of grievances conventionally submitted to arbitration, and to interpret the no-strike clause so as to permit that to be done. It is quite another thing to make it virtually impossible for union members to maintain their tradition of not crossing picket lines under a rationalization that the union, *sub silentio,* relinquished this valued right in favor of permitting an arbitrator to decide whether an agreement not to honor a picket line should be read into the contract (Dissenting opinion of Judge Adams, 507 F.2d at 654-655, App. A, *infra,* App. 9).

The result reached by the Court below represents a complete departure from the narrow path of accommodation envisioned by the Court in *Boys Markets,* and generally from this Court's long-standing practice of accommodating the Norris-LaGuardia Act with other labor statutes and federal labor policy. *Note,* Accommodation of the Norris-LaGuardia Act to Other Federal Statutes, 72 Harv. L. Rev. 354 (1958). It is a departure which does no service whatsoever to the pro-arbitration policies which *Boys Markets* sought to protect. As observed by the Second Circuit in *Buffalo Forge* and the dissents of Judge Fairchild in *Inland Steel, supra,* and Judge Adams in this case, it is also a departure which leaves Norris-LaGuardia not simply accommodated but actually obliterated. It is a result which disserves both Taft-Hartley and Norris-LaGuardia, and which should therefore be reviewed and rejected by this Court.

III. THE DECISION BELOW CONFLICTS SQUARELY WITH RECENT DECISIONS OF THE COURTS OF APPEALS AND THE NATIONAL LABOR RELATIONS BOARD WHICH IMPLEMENT THE WELL-ESTABLISHED PRINCIPLE THAT HONORING A FOREIGN PICKET LINE IS CONDUCT PROTECTED BY THE NATIONAL LABOR RELATIONS ACT.

It is well-estabished law—indeed, the authorities are perfectly unanimous—that employees who honor a picket line at the place of their employment may do so as a matter of right under Section 7 of the National Labor Relations Act.[10] Any attempt by their employer to discharge or discipline them, on account of their refusal to cross to come to work, is an unfair labor practice.[11] Should discipline or discharge occur, the affected employees may call upon the coercive powers of the National Labor Relations Board, and the remedy of reinstatement with back pay will be enforced in the Courts of Appeals.

It is true that the right to refuse to cross a picket line is subject to waiver.[12] But since a federal statutory right is at stake, any waiver must be articulated in "clear and unmis-

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[10] *See, e.g., Kellogg Co.* v. *NLRB,* 457 F.2d 519 (6th Cir.), *cert. denied,* 409 U.S. 850 (1972); *Montana-Dakota Utilities Co.* v. *NLRB,* 455 F.2d 1088 (8th Cir. 1972); *NLRB* v. *Union Carbide Corp.,* 440 F.2d 54 (4th Cir.), *cert. denied,* 404 U.S. 826 (1971); *NLRB* v. *Difco Laboratories,* 427 F.2d 170 (6th Cir.), *cert. denied,* 400 U.S. 833 (1970); *NLRB* v. *Southern Greyhound Lines,* 426 F.2d 1299 (5th Cir. 1970); *News Union of Baltimore* v. *NLRB,* 393 F.2d 673 (D.C. Cir. 1968); *Redwing Carriers, Inc.* 137 NLRB No. 162, 50 LRRM 1440 (1962).

[11] That is, the right to honor picket lines is within the broad protection of Section 7 of the National Labor Relations Act, 29 U.S.C. §157, and therefore employer interference with exercise of the right violates Sections 8(a)(1) and 8(a)(3), 29 U.S.C. §§158(a)(1) and (3), and also (in some circumstances) the first proviso of Section 8(b)(4), 29 U.S.C. §158(b)(4).

[12] *See, e.g., NLRB* v. *Rockaway News Supply Co.,* 345 U.S. 71 (1953).

takable language" appearing in the employees' collective bargaining agreement, and plainly "[s]ilence in the bargaining agreement on such an issue does not meet this test."[13] Thus, for example, waiver does not occur when the union agrees to a broad no-strike clause; this is not a sufficiently specific waiver and therefore the right to honor picket lines survives such a clause.[14] And quite obviously the complete absence of *any* no-strike or no-stoppage promise by the union means that the right to honor picket lines is left fully intact.

The decision below cannot be reconciled with the black-letter law of the National Labor Relations Act summarized in the last two paragraphs. More particularly and dramatically, the decision below collides with two recent decisions of the NLRB which build upon these premises.

In *Gary-Hobart Water Corp.*[15] and *Keller-Crescent Co.,*[16] the Board reaffirmed the undoubted first principle of this field of law:

> It is fundamental that the right to strike is guaranteed by the NLRA. This right is protected by law, whether the strike be for economic reasons, for the purpose of improving working conditions, *or for mutual aid and protection of employees of members of another union.* Thus, the right to engage in a sympathy strike

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[13] *Timken Roller Bearing Co.* v. *NLRB,* 325 F.2d 746, 751 (6th Cir.), *cert. denied,* 376 U.S. 971 (1964). *See also, e.g., Mastro Plastics Corp.* v. *NLRB,* 350 U.S. 270, 280-83 (1956); *NLRB* v. *Wisconsin Alum. Foundry Co.,* 440 F.2d 393, 399 (7th Cir. 1971).

[14] *See, e.g., Kellogg Co.* v. *NLRB,* 457 F.2d 519 (6th Cir.), *cert. denied,* 409 U.S. 850 (1972).

[15] 210 NLRB No. 87, 86 LRRM 1210, *enf'd sub nom. Gary-Hobart Water Corp.* v. *NLRB,* 511 F.2d 284 (7th Cir. 1975).

[16] 217 NLRB No. 100, ... LRRM .... (May 8, 1975).

or honor another union's picket line is also protected. However, the right to strike, including the right to engage in sympathy strikes or to refuse to cross another union's picket line, may be waived by appropriate provisions in a collective bargaining agreement.

While statutory rights may be waived, however, the Board and the Courts have repeatedly emphasized that such waivers will not be readily inferred, and there must be a clear and unmistakable showing that waiver occurred. And the principle that the waiver of statutory rights must be clear and unequivocal applies to the right to strike, including the right to engage in a sympathy strike or to honor the picket line of another union. (86 LRRM at 1213). (Emphasis in original).

See also, Keller-Crescent Corp., 217 NLRB No. 100 at 7-9, . . . LRRM at . . . . In both cases the question was whether waiver had occurred. Each bargaining agreement contained (1) a mandatory arbitration clause and (2) an express promise not to engage in work stoppages over disputes subject to arbitration. In both cases the Board held that notwithstanding the contractual language no waiver of the right to honor picket lines could be inferred.

The Board's analysis of the no-strike clause in *Gary-Hobart* speaks directly to the present case:

> The General Counsel and Charging Party contend that the waiver of the right to strike is only as extensive as the scope of the grievance and arbitration procedure of the contract in question. They argue that when the subject of the dispute is not cognizable under the grievance-arbitration procedure the quid pro quo for the no-strike clause is no longer present and the no-strike clause does not apply. We agree. The Board and the courts, including the Supreme Court, have indicated no-strike provisions will not be enforced where the subject of the dispute is not covered by the grievance-arbitration procedure. (86 LRRM at 1213).[17]

Then the Board underscored the essential point: that a work stoppage caused solely by a foreign picket line cannot be thought to offend or derogate from the duty to arbitrate work place grievances, simply because there is *no underlying grievance* at the root of such a stoppage that might be resolved by arbitration.

> The strike by the clerical unit [i.e., the employees who honored the foreign picket line] was not over a grievance which the parties were contractually bound to arbitrate. Rather, the strike itself precipitated the dispute—the validity under the Union's no-strike obli-

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[17] The Board continued:

> The Supreme Court has spoken to the issue primarily in suits under Section 301 of the Act. In Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co., 369 U.S. 95, 105, the Court said that 'a strike to settle a dispute which a collective bargaining agreement provides shall be settled exclusively and finally by compulsory arbitration constitutes a violation of the agreement.' However, it added that such a no-strike agreement is not to be implied 'beyond the area which has been agreed will be exclusively covered by compulsory arbitration.' Likewise, in Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235, also a section 301 injunction suit, Justice Brennan, for the majority, in discussing when a strike should be enjoined by a district court, stated that a strike would be enjoined (unprotected) only if 'over a grievance which both parties are contractually bound to arbitrate.' And in the Supreme Court's most recent pronouncement on the scope of an arbitration provision, again in a Section 301 context (Gateway Coal Co. v. United Mine Workers of America, et al., 410 U.S. 953), the Court stated, 'No obligation to arbitrate a labor dispute arises solely by operation of law. The law compels a party to submit his grievance to arbitration only if he has contracted to do so.'
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> . . .
>
> [A]t least where statutory rights are involved, unless they are specifically waived, the contracting union does have the right to strike in connection with a dispute not subject to grievance-arbitration, for the no-strike clause is only as extensive as the grievance-arbitration procedure. (86 LRRM at 1213-14).

> gation of the employee-members honoring the . . . picket line. Put differently, the dispute was between the [picketing] unit and the Respondent and therefore not resolvable under the clerical unit's grievance procedure. (86 LRRM at 1214).

In short, only those stoppages caused by *underlying work place grievances* violate the arbitration pledge; the honoring of a foreign picket line by definition does not involve any underlying grievance subject to arbitration; therefore employees who refuse to cross must be protected by the Board against the employer's attempt to discourage exercise of their statutory right.[18]

An astonishing and intolerable conflict arises from the divergent views of the NLRB and the court below. The conflict is made manifest by a simple example: Suppose that employees decide to honor a foreign picket line and that their bargaining agreement contains both an arbitration clause and a no-strike clause. The employer seeks an injunction against the stoppage and also disciplines employees who engaged in the stoppage. A district court within the Third, Fourth, and Seventh Circuits now is obliged to find the employees' conduct *unlawful* and issue an anti-strike injunction under Section 301 of the Labor-Management Relations Act. The NLRB is obliged to find the employees' conduct *protected* and to order the employer to cease and desist from all attempts to discourage exercise of rights under the National Labor Relations Act. The district court would reason that it is a debatable issue whether the contract waives the employees' right to honor picket

[18] This reasoning was fully approved by the Seventh Circuit decision enforcing the NLRB's order in *Gary-Hobart:*

> The refusal to dishonor another union's picket line or engaging in a sympathy strike in connection with another local's strike are not disputes or controversies arising under or in connection with the first local union's agreement and are therefore neither arbitrable nor subject to the no-strike provisions. (511 F.2d at 288).

lines, that this issue should have been sent to arbitration, and therefore the stoppage breaches the arbitration duty. The Board would reason that no waiver can be inferred absent clear and unmistakable language, that a picket-line stoppage cannot possibly violate the arbitration duty because an underlying grievance is absent, and therefore the stoppage is fully protected. Amazingly, the Courts of Appeals mentioned are obliged by their own decisions *both* to affirm the district court injunction *and* to enforce the NLRB's cease-and-desist order.[19]

CONCLUSION

The decision below rests upon a concoction of inferences, implications, presumptions, and the hypothetical discharge of a hypothetical employee, all of which results in an unwarranted and unjustified extension of this Court's *Boys Markets* decision and the virtual destruction of organized labor's Magna Carta, the Norris-LaGuardia Act. For all the reasons stated herein, it is respectfully prayed that the petition for writ of certiorari be granted.

Respectfully submitted,

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[19] For the Fourth Circuit, compare *NLRB* v. *Union Carbide Corp.*, 440 F.2d 54 (1971) with cases from that Circuit cited in Part I, *supra.* For the Seventh Circuit, compare *Gary-Hobart Water Corp.* v. *NLRB,* 511 F.2d 284 (1975), with cases from that Circuit cited in Part I, *supra.* For the Third Circuit, see *Island Creek Coal Co.* v. *UMWA,* 507 F.2d 650, 652 (1975).

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ISLAND CREEK COAL COMPANY,

Appellee,

v.

UNITED MINE WORKERS OF AMERICA, *et al.*,

Appellant.

No. 74-1631

Before ADAMS, GIBBONS and WEIS, Circuit Judges.

OPINION OF THE COURT

GIBBONS, Circuit Judge.

In this appeal from an order granting a preliminary injunction pending arbitration we consider once again the scope of the no strike obligation implied from the settlement of dispute provisions of the National Bituminous Coal Wage Agreement. The plaintiff employer, Island Creek Coal Company, operates Bird No. 2 and No. 3 mines in Somerset County, Pennsylvania, and employs members of Local No. 998, United Mine Workers of America. In April, 1974 a work stoppage commenced at Florence Mining Company No. 2 mine, whose employees belong to Local No. 680 of the United Mine Workers. On April 11, 1974 20 to 25 men not employed by Island Creek, and so far as appears not members of Local 998, picketed Bird No. 2 and No. 3 mines. The Island Creek employees declined to cross the picket line and report for work. Island Creek sought an

injunction in the district court pursuant to §301 of the Labor-Management Relations Act of 1947, 29 U.S.C. §185 alleging that under the collective bargaining agreement, whether the members of Local 998 were required to report for work across stranger picket lines was an arbitrable dispute under the settlement of disputes procedures of the agreement. After a hearing the district court issued the requested preliminary injunction and Local Union 998 appeals.[1]

The settlement of disputes provisions of the National Bituminous Coal Wage Agreement of 1971 are virtually identical with the settlement of disputes provisions of the 1968 Agreement which was construed by the Supreme Court in Gateway Coal Co. v. United Mine Workers, 414 U.S. 368, 94 S.Ct. 629, 38 L.Ed.2d 583 (1974). The key provisions are Article XVII, §(b):

> "Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in the agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time." (Appendix at 4a).

and Article XX:

> "The United Mine Workers of America and the Employers agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Disputes' article of this agreement. . . ." (Appendix at 6a)

In *Gateway* the Supreme Court held that the 1968 Agreement implied a no strike obligation co-terminus with the grievance-arbitration provisions, 414 U.S. at 381-382, 94 S.Ct. 629, and that the language "any local trouble of any kind aris[ing] at the mine" was to be read broadly to encompass even disputes over mine safety. *Id.* at 376, 94 S.Ct. at 636. If the underlying dispute falls within the scope of the grievance-arbitration clause, then, on the authority of *Gateway* the order appealed from must be affirmed. The Seventh Circuit, considering the same contract as is before us, and in the same context of a dispute over the employees' duty to cross a stranger picket line, held that injunctive relief was proper. Inland Steel Company v. Local 1545, UMW, 505 F.2d 293 (7th Cir., 1974). Judge Fairchild dissented, referring to the analysis made by Judge Hunter in his dissenting opinion in NAPA Pittsburgh, Inc. v. Automotive Chauffeurs, 502 F.2d 321, 324 (3d Cir.), cert. denied, — U.S. —, 95 S.Ct. 625, 42 L.Ed.2d — (1974).

[1] United Mine Workers of America, and District 2, United Mine Workers of America are also defendant-appellants.

Our analysis must begin with the question whether there is a dispute which falls within the grievance-arbitration provisions of the contract. In this respect the present case is distinguishable both from *Gateway* and from *NAPA Pittsburgh*. In the former the underlying safety dispute was between the employer and its employees and the Supreme Court held that safety disputes were not excepted from the sweeping "any local trouble of any kind" language of the contract. In the latter, although the picket line was not the result of a dispute between the employer and its employees, the contract had an express no strike undertaking and a specific reference to honoring secondary picket lines.[2]

[2] *See* Wilmington Shipping Co. v. Longshoremen's Local 1426, — F.2d —, 86 LRRM 2846 (4th Cir., June 19, 1974), cert. denied, — U.S. —, 95 S.Ct. 498, 42 L.Ed.2d 296 (1974); Pilot Freight Carriers v. Teamsters, 497 F.2d 311 (4th Cir. 1974). In Monongahela Power Co. v. IBEW, 484 F.2d 1209 (4th Cir. 1973), the court held that an injunction could be issued to enforce a no strike clause in a contract even though it had no provision applicable to honoring a picket line of another union.

In this case there is no express no strike undertaking and there is no contractual reference to honoring picket lines. Thus neither *Gateway* nor *NAPA Pittsburgh* are dispositive of the question of arbitrability of this dispute. As with many legal issues, how we frame the question probably determines its answer.

Whatever difficulties there may be concerning the scope of the remedy recognized in Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970), there would, we assume, be a high degree of unanimity in support of the proposition that if the contract gives the union and the employees the right to grieve and arbitrate a given dispute that remedy must be pursued in preference to a work stoppage. Thus the initial inquiry should not be whether the employer is entitled to an injunction, but rather, whether the underlying dispute is one which the union and the employees could grieve and arbitrate.

In making this initial inquiry, in the context of the employees' refusal to cross a stranger picket line, the starting point is the recognized principle that a union man's honoring of a lawful[3] stranger picket line is protected activity. The right to engage in that protected activity may, however, be bargained away by the collective decision of his union. NLRB v. Rockaway News Supply Co., 345 U.S. 71, 73 S.Ct. 519, 97 L.Ed. 832 (1953). In the *Rockaway News* case the collective bargaining agreement contained

[3] AFL v. Swing, 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855 (1940). While recognition by the union of an unlawful secondary picket line is normally a violation of §8(b)(4), 29 U.S.C. §158(b)(4), in the absence of a contractual undertaking such an unfair labor practice would not give rise to a remedy under §301, 29 U.S.C. §185. *Cf.* Carpenter & Joiners Local 213 v. Ritters Cafe, 315 U.S. 722, 62 S.Ct. 807, 86 L.Ed. 1143 (1942) (upholding state law outlawing secondary picketing). Thus for present purposes the question whether the picketing here was lawful stranger picketing or unlawful secondary picketing is irrelevant.

an express no strike clause but no specific reference to honoring picket lines. An employee truck driver refused to make a pick-up at a plant the employees of which were on strike, and was discharged. His union grieved his discharge through arbitration and the arbitrator decided in favor of the employer. The discharged employee then filed an unfair labor practice charge with the National Labor Relations Board, contending that he was discharged for engaging in protected activity. The Board, recognizing that the right to honor lawful stranger picket lines could be and had been bargained away, held that the contract was void because it contained an unlawful maintenance of membership clause. Thus it sustained the unfair labor practice charge. The Supreme Court reversed, holding that the no strike and arbitration clauses were separable from the maintenance of membership clause, and that the arbitrator's decision was binding. 345 U.S. at 81, 73 S.Ct. 519. *Rockaway News,* is authority for the proposition that the question whether the right to honor a stranger picket line has been bargained away may be an arbitrable question. We ask, then, if Island Creek had discharged its employees who in this instance refused to cross a stranger-picket line, could the union have grieved their discharge under the settlement of disputes provisions of the instant contract?

We grant that the answer is not as clear in this case as in a case where the contract contains an express no strike clause as in *Rockaway News* or an express reference to picket lines, or, as in *NAPA Pittsburgh,* both. Nevertheless we conclude that under the settlement of disputes provisions of this contract the union could have grieved and arbitrated a discharge of its members for refusing to cross a picket line. The contract covers not only all matters dealt with specifically but also "matters not specifically mentioned." Art. XVII, §(b). It provides that "all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Disputes' article. . . ."

Art. XX. These clauses are broad enough to confer on the arbitrator jurisdiction to resolve disputes over matters which were not specifically resolved in the collective bargaining process, including the matter of the members' right to honor stranger picket lines. This result may superficially seem inconsistent with the philosophy of collective bargaining, since it recognizes a substantial jurisdiction in the grievance-arbitration process to fill in the interstices of the collective bargaining agreement. *See* United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 580, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960). The apparent inconsistency is only superficial, however, since the settlement of disputes provisions were bargained for and the parties have undertaken to live by them during the term of the contract. The result is consistent, moreover, with the presumption of arbitrability laid down by the Supreme Court.

> "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." Gateway Coal Co. v. United Mine Workers, *supra,* 414 U.S. at 377-378, 94 S.Ct. at 637 (quoting from United Steelworkers of America v. Warrior & Gulf Navigation Co., *supra,* 363 U.S. at 582-583, 80 S.Ct. 1347).

It will undoubtedly be urged that by starting with the question whether the union could grieve a discharge for refusing to cross a picket line we have predicated our analysis upon a different dispute than that before us, since in the discharge case the discharge itself is the dispute. There is, however, no meaningful distinction. In the discharge case the arbitrator would be required to determine whether or not the union has bargained away its members' right to honor stranger picket lines. If he has jurisdiction to make such a determination that jurisdiction is equally available to

the employer. To make a distinction which would in effect force the employer to discharge employees in order to bring the settlement of disputes provisions into operation would be counter-productive of the intended purpose of the provisions and of the national policy favoring settlement of industrial disputes by peaceful means.

Since we conclude that the dispute over whether the union has contracted away its members' right to honor stranger picket lines is an arbitrable dispute, it follows from *Gateway* that the injunction appealed from was in this case properly issued.

This decision should not, however, be read as generally applicable to contracts where there is neither an express no strike clause nor a reference to the honoring of picket lines. The grievance-arbitration clause in this case is unusually broad; broad enough to permit the arbitrator to decide issues which the parties did not specifically resolve in the bargaining process. Our conclusion that it is broad enough to support the injunctive relief granted by the district court does not mean that in any case where there is a grievance-arbitration clause employees may automatically be enjoined from honoring picket lines. A narrower grievance-arbitration clause might well produce an opposite result. The no strike obligation is as wide as, but no wider than, the contractual arbitration undertaking of the parties. *See* Parade Publications, Inc. v. Philadelphia Mailers Local 14, 459 F.2d 369 (3d Cir. 1972).

The order appealed from will be affirmed.

ADAMS, Circuit Judge (dissenting):

This Court in *NAPA,* by a 6 to 3 vote, decided that a strike could be enjoined by a federal court when the union members refused to cross a secondary picket line that was established by employees of an associated plant located some distance away. In *NAPA,* the collective bargaining contract

in question contained an express no-strike clause and also stated that "It shall not be a violation of the agreement . . . in the event an employee refuses . . . to go through or work behind any primary picket lines . . . at the Employer's place or places of business." There is no express no-strike clause in the collective bargaining agreement present in this case and no direct or indirect reference to secondary picketing. Accordingly, the majority opinion in this case constitutes an extension of the rule in *NAPA*.

For the reasons set forth in the dissenting opinions in *NAPA*[1] and for the additional reason that an extension is here made to the *NAPA* doctrine that will further constrict

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[1] For an incisive analysis of the consideration militating against permitting the district court to enjoin the work stoppage in *NAPA*, which is equally applicable in *Island Creek*, see Note, 88 Harv.L.Rev. 463 (1974). The Note points out: (1) that the work stoppage was not designed to force a concession from the employer on an arbitrable issue, as was the strike in Boys Markets v. Retail Clerks Union, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970); (2) that in *NAPA*, unlike *Boys Markets*, the union was not trying to avoid its obligation to arbitrate and the dispute would ultimately have been resolved by arbitration even without an injunction, so that no "accommodation" was necessary between the policy of the Norris-LaGuardia Act; (3) that in *Boys Markets* the strike was clearly illegal, while in *NAPA* the work stoppage was arguably legal, and instead of "merely enforc[ing] the obligation that the union freely undertook," as in *Boys Markets*, the *NAPA* injunction created a new obligation which undermined the union's contractual rights; (4) that *NAPA* by permitting an injunction wherever the work stoppage was arguably illegal would emasculate the Norris-LaGuardia Act by prohibiting injunctions only when the strike was clearly legal, in which case no injunction could be issued in any case; (5) that in *NAPA* since the dispute underlying the work stoppage was between the company and another union, it was not subject to settlement under the arbitration process set out in the NAPA-Local 926 contract—while the arbitrable dispute between *NAPA* and Local 926 was a result, rather than a cause, of the work stoppage; and (6) that under ordinary principles of equity, before enjoining the strike the district court in *NAPA* should have concluded that the employer would probably succeed on the merits of the issue whether the stoppage was legal.

the protection established by the Norris-LaGuardia Act, I respectfully dissent.

Moreover, no bench mark has been suggested by which additional extensions can logically be precluded, once the underpinnings of *NAPA* plus those in this case are established.

I am concerned that if the courts continue to interpret the national policy favoring arbitration along the lines set forth by the majority here and in *NAPA*, then by a process of attrition, the salutary rule established after a long and sometimes bitter struggle by the Norris-LaGuardia Act will be imperceptibly chipped away until it has lost a substantial portion of its vitality. The Supreme Court specifically eschewed such an intent. 398 U.S. at 253, 90 S.Ct. 1583.

It was one thing to further the policy favoring arbitration of grievances conventionally submitted to arbitration, and to interpret the no-strike clause so as to permit that to be done.[2] It is quite another thing to make it virtually impossible for union members to maintain their tradition of not crossing picket lines under a rationalization that the union, *sub silentio*, relinquished this valued right in favor of permitting an arbitrator to decide whether an agreement not to honor a picket line should be read into the contract.[3]

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[2] *See* Boys Markets, 398 U.S. at 247-248, 90 S.Ct. 1583 (1970). In *Boys Markets*, the dispute arose when the store's frozen foods supervisor and members of his crew, not members of the bargaining unit, began to rearrange merchandise in the frozen food cases. 398 U.S. at 239, 90 S.Ct. 1583. This is the type of dispute conventionally submitted to arbitration.

[3] In the present case, as in *Boys Markets* and *NAPA*, the question involved—whether the union has a right to honor secondary picket lines—is not clearly arbitrable under the collective bargaining agreement. *Contrast* Gateway Coal Co. v. United Mine Workers, 414 U.S. 368, 376, 94 S.Ct. 629, 636, 38 L.Ed. 2d 583 (1974): "On its face, th[e] contractual language admits of only one interpretation: that the agreement required the union to submit this dispute to arbitration for resolution by an impartial umpire."

The arbitration clauses relevant here are the same generalized ones present in *Gateway Coal*. The character of the issue on which arbitration is sought, however, is different. In *Gateway* the union went on strike because the employer reinstated two supervisors whose presence the union considered a safety hazard. The Court stated, "A collective-bargaining agreement cannot define every minute aspect of the complex and continuing relationship between the parties. Arbitration provides a method for resolving the unforeseen disagreements that inevitably arise." 414 U.S. at 378, 94 S.Ct. at 637. Surely, however, the mineworkers' right here to observe a stranger picket line cannot nonchalantly be described as an "unforeseen" issue.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ISLAND CREEK COAL COMPANY,
Plaintiff,

v.

UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

Civil Action No. 74-347

Temporary Restraining Order.

(Filed April 12, 1974.)

AND NOW to-wit this 12th day of April, 1974, it appears to the Court that the employee-members of Local 998 are engaging in an illegal work stoppage at Plaintiff's Bird No. 2 and Bird No. 3 Mines and related facilities in Somerset County, Pennsylvania;

That the subject matter of said work stoppage is subject to the grievance and arbitration procedures of the collective bargaining agreement;

That the subject matter of such work stoppage does not involve a genuine threat to the health or safety of said employees;

That the Plaintiff will suffer irreparable harm if said work stoppage is permitted to continue; and

That greater harm would result to the Plaintiff from denial of injunctive relief than would result to the Defendants from the grant thereof, it is herewith ORDERED, ADJUDGED and DECREED that a Temporary Restraining Order be and herewith is issued enjoining Defendant Local 998, its officers, representatives and members and

all persons acting in concert with them or in their behalf from:

1. Engaging, or continuing to engage, in a strike or other work stoppage, slow-down or concerted refusal of overtime or premium shift work at Plaintiff's Bird No. 2 and Bird No. 3 Mines, adjacent Preparation Plant and related facilities and located in Somerset County, Pennsylvania, over any dispute, disagreement, or other differences arising out of a matter which is properly subject to the grievance and arbitration procedures of the collective bargaining agreement in effect between the United Mine Workers of America and the Plaintiff, covering Plaintiff's employees at the above-enumerated locations; or

2. Picketing or in any other manner interfering with the orderly resumption of, or continuation of, operations at Plaintiff's Bird No. 2 and Bird No. 3 Mines, adjacent Preparation Plant and related facilities located in Somerset County, Pennsylvania, in connection with any dispute, difference or other trouble arising out of a matter properly subject to the grievance and arbitration procedures of the collective bargaining agreement in effect between the United Mine Workers of America and Plaintiff covering Plaintiff's above-enumerated operations;

3. It is further ORDERED that the Defendant, its officers, representatives and members, are directed and required to utilize the grievance and arbitration procedures of the collective bargaining agreement in effect between the United Mine Workers of America and the Plaintiff covering the employees of the Plaintiff at its Bird No. 2 and Bird No. 3 Mines, adjacent Preparation Plant and related facilities located in Somerset County, Pennsylvania, for the resolution of any grievance, differences, or local trouble at Plaintiff's Bird No. 2 and

Bird No. 3 Mines and adjacent Preparation Plant as aforesaid;

4. That the Defendant, its officers, representatives and members, are directed to take all action which may be necessary to assure compliance with the terms of the collective bargaining agreement in effect between the United Mine Workers of America and the Plaintiff covering the employees at Plaintiff's Bird No. 2 and Bird No. 3 Mines, adjacent Preparation Plant and related facilities located in Somerset County, Pennsylvania; and

5. That the employee-members of Defendant are directed to report for work across any picket lines existing at or which may be established at Plaintiff's Bird No. 2 and Bird No. 3 Mines, adjacent Preparation Plant and related facilities.

This injunction shall remain in effect until a hearing on a preliminary injunction which shall be held on the 17th day of April, 1974 at 3:30 P.M. in Court Room No. 10.

This Temporary Restraining Order is conditioned upon the posting of a bond in the amount of $1,000 by the Plaintiff.

Copies of this Order may be served by attorneys for Plaintiff or their representatives.

BARRON P. McCUNE,
United States District Judge.

Entered at Pittsburgh, Pa.
at 2:20 o'clock p.m.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ISLAND CREEK COAL COMPANY,
Plaintiff,

v.

UNITED MINE WORKERS OF AMERICA, *et al.*,
Defendants.

Civil Action No. 74-347

Memorandum Containing Findings of Fact, Conclusion of Law and Order.

(Filed April 18, 1974.)

Barron P. McCune, *District Judge.*

On Friday, April 12, 1974, this court issued a Temporary Restraining Order enjoining a work stoppage at the Bird No. 2 and Bird No. 3 Mines of plaintiff. On April 17, 1974, in the afternoon a hearing was held to determine whether a preliminary injunction should issue or whether the order of April 12, 1974, should be dissolved. We had already heard testimony on April 5, 1974, in the case of Florence Mining Company v. Local 1680 of the United Mine Workers of America which revealed the reason for the work stoppage at Island Creek's Mines and many other mines in Western Pennsylvania.[1] At this time a great many of them have ceased operating. While we conducted the hearing concerning plaintiff's mines, Judge Weber of this court was conducting a similar hearing concerning the mines of Beth-

[1] It is apparent that men from Local 1680 are seeking sympathy in a labor dispute there.

lehem Steel Corp. in Cambria County, Pennsylvania, and we take judicial notice that several other complaints asking equitable relief have been filed with the Clerk of this court in the past five days.

Island Creek Coal Company employs 350 coal miners at the two mines in question located at Tire Hill, Pennsylvania, where 3200 tons of metallurgical coal is produced each day having a value of $20.00 per ton. The daily loss is, therefore, about $64,000.00 when the mines do not work. Fixed costs continue whether the mines work or not. Island Creek has long term contracts under which the coal is required for various customers, both domestic and foreign.

On April 11, 1974, the work stoppage at the two mines above identified began when pickets appeared at the mines before the beginning of the 4:00 P.M. shift and the employees refused to work in the face of that appearance. At 12:01 A.M., Monday, April 15, 1974, the men returned to work but again refused to work at 12:01 Tuesday, April 16, 1974, and have not worked again because roving pickets have again appeared.

The pickets are not employees of plaintiff. They have not been identified but are obviously the employees of some other mines in the general area. While few in number most of the time a large number appeared at plaintiff's mines about 10:30 P.M. on April 16, 1974. The numbers vary according to the witnesses but we find that as many as 90 pickets were present in this group. Their obvious purpose was to impede work at plaintiff's mines. State and local police were present and kept order and the departing shift left the mines without incident but the scheduled shift did not enter the mine nor did it attempt to do so.

The local union (Local 998) at plaintiff's mines contends that it has no dispute with plaintiff and that there is no grievance pending which has led to the work stoppage. There is no health or safety issue involved because of any

condition inside the mines. The witnesses contend that the plaintiff's employees will work if roving pickets are not present and we find that the only reason for the work stoppage is the presence of roving pickets. Differing attitudes exist concerning presence of pickets. While some men observe what is termed a tradition that no one should work in the presence of any picket, other men do not observe the tradition but give up their work only when they believe force is present. Attitudes also differ about the ability of the civil authorities to keep order at the mines and about the surreptitious punishments that may later befall a man who crosses a picket line.

As a result of the work stoppages the plaintiff has lost large quantities of coal and will continue to lose great quantities of coal if the stoppage continues. The lost production cannot be made up and it is not likely that the defendants can compensate plaintiff in money damages. Irreparable harm exists and will continue into the future. Greater harm will result to the employer if we refuse a preliminary injunction than will occur to the union if we grant one. It is likely that plaintiff will prevail in an appeal.

The parties are subject to a labor agreement which contains in Article XVII a method for the settlement of disputes ending in binding arbitration. (The National Bituminous Coal Wage Agreement of 1971). There is no disagreement that the contract exists but the Union argues that there is no labor dispute and the company argues that there is a labor dispute because their men refuse to work. The plaintiff is willing to arbitrate the dispute. The Union says there is nothing to arbitrate, that, in fact, fear of retribution or fear of physical harm or the observance of the tradition that men should not cross a picket line is the only reason the men refuse to work. So the issues boil down to the following: are plaintiff's employees required to cross the picket lines set up by strangers and is their refusal to cross such picket lines an arbitrable matter under the contract?

Other courts have considered these issues. In *United States Steel Corp.* v. *UMW* in the Fourth Circuit, No. 74-8029 (not reported) Judge H. E. Widener, Jr. on March 13, 1974, in the same situation held that the failure to cross a picket line was an arbitrable dispute and that the local unions are subject to an implied obligation not to strike but to arbitrate under the arbitration clause of the contract, citing *Monongahela Power Co.* v. *Electrical Workers,* Local No. 2332, 484 F.2d 1209 (4th Cir. 1973) and *Gateway Coal Co.* v. *UMW,* 42 U.S.L.W. 4095 (U.S. Jan. 8, 1974). There is a strong presumption in favor of arbitration of any labor dispute, *United Steel Workers* v. *Warrior & Gulf Navigation Co.,* 363 U.S. 564 (1960).

Judge Weber of this court has decided a precisely similar case in the same way yesterday, April 17, 1974, at Civil Action No. 72-825.

The solution to the serious problem existing today in Western Pennsylvania lies in the ability of the International Union to enforce the contract. It is a party to this action. It is necessary in our view that the contract be enforced uniformly in the areas of the county where it prevails.

Accordingly, the following conclusions of law are made:

1. This court has jurisdiction.

2. The parties before the court are bound by the National Bituminous Coal Wage Agreement of 1971 including Art. XVII "Settlement of Disputes" and Art. XX which requires that the parties "maintain the integrity of the contract."

3. The defendants' resort to a work stoppage because of the presence of roving pickets was a violation of the contract.

4. Because of the presence of irreparable harm which will continue in the absence of an injunction and the

absence of an adequate remedy of law, we conclude that an injunction is appropriate under *Boys Market Inc.* v. *Retail Clerks' Union,* 398 U.S. 235 (1970).

5. The International Union and District No. 2 are responsible for the action of the local unions and individual union members including those who are roving from mine to mine.

6. The refusal of the men to cross picket lines is an arbitrable issue.

ORDER

AND NOW, April 18, 1974, after notice and hearing, it is ordered that the Temporary Restraining Order of April 12, 1974, shall be and the same is continued in force and shall become a Preliminary Injunction until further Order of this court.

Copies of this order may be served by private persons employed by counsel. Copies shall immediately be served on the officers of the International Union, District No. 2, and Local 998.

BARRON P. McCUNE,
United States District Judge.

APPENDIX D

Section 4 of Norris-LaGuardia Act, 29 U.S.C. 104

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Section 7 of National Labor Relations Act, as amended, 29 U.S.C. 157

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

Sections 8(a)(1) and (3) of National Labor Relations Act, as amended, 29 U.S.C. 158(a)(1) and (3)

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 157 of this title;

* * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement,

whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

Section 301(a) of National Labor Relations Act, as amended, 29 U.S.C. 185(a)

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BUFFALO FORGE COMPANY,

Appellant,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, *et al.*,

Appellees.

No. 74-2698

Before KAUFMAN, *Chief Judge,* SMITH and TIMBERS, *Circuit Judges.*

OPINION OF THE COURT

SMITH, *Circuit Judge.*

This appeal raises a narrow but significant question of labor law of first impression in this court: If a union enters into a collective bargaining agreement establishing a mandatory arbitration procedure and including a no-strike clause and then later strikes *solely* out of deference to another union's lawful picket line at a place of employment common to the two unions, does a federal district court have authority under §301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a),[1] to enjoin the

[1] §185. Suits by and against labor organizations—Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

strike or is it precluded from granting injunctive relief by §4 of the Norris-LaGuardia Act of 1932, 29 U.S.C. §104?[2] Resolution of this issue requires interpretation of *Boys Market, Inc.* v. *Retail Clerks Union, Local 770,* 398 U.S. 235 (1970), where the Supreme Court set forth a general standard for reconciling the competing demands of the two statutory provisions in the context of a strike over a grievance which the parties are bound by agreement to submit to arbitration. In the case before us, the United

[2] §104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following act:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

States District Court for the Western District of New York, John T. Curtin, *Chief Judge,* determined that under *Boys Market* it was deprived of jurisdiction by §4 of the Norris-LaGuardia Act to issue a preliminary injunction sought by Buffalo Forge Company against the work stoppage generated by the defendant unions' order to its members to observe other employees' lawful picket line; the unions' obligations under the preexisting collective bargaining agreements to resolve disputes with management through a mandatory six-step settlement procedure culminating in arbitration and to refrain from authorizing strikes were deemed not controlling in light of Congress' stated antipathy to injunctions in §4. 386 F.Supp. 405 (1974). After reviewing the divergent authority on the issue presented by this case,[3] we are convinced that Chief Judge Curtin has correctly construed the import of *Boys Market* and therefore affirm the order below.[4]

The United Steelworkers of America and two of its locals

[3] Cases supporting the district court's holding in this case include *Amstar Corp.* v. *Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO,* 468 F.2d 1372 (5th Cir. 1972); *General Cable Corp.* v. *The International Brotherhood of Electrical Workers, Local Union 1644, AFL-CIO,* 331 F.Supp. 478 (D. Md. 1971); *Simplex Wire and Cable Co.* v. *Local 2208 of the International Brotherhood of Electrical Workers, AFL-CIO,* 314 F.Supp. 885 (D. N.H. 1970). Contrary authority are *Napa Pittsburgh, Inc.* v. *Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926,* 502 F.2d 321 (3d Cir. 1974) *(en banc), cert. denied,* 43 U.S.L.W. 3328 (Dec. 9, 1974); *Monongahela Power Co.* v. *Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO-CLC,* 484 F.2d 1209 (4th Cir. 1973); *Inland Steel Co.* v. *Local Union No. 1545, United Mine Workers of America,* 505 F.2d 293 (7th Cir. 1974); *Barnard College in the City of New York* v. *Transport Workers Union of America, AFL-CIO,* 372 F.Supp. 211 (S.D.N.Y. 1974).

[4] The appellees also urge an alternative ground for affirmance: that the appellant is not entitled to injunctive relief because it has not made "every reasonable effort" to settle the dispute by negotiation, as required by 29 U.S.C. §108. Since we concur in the district court's basis for denying the preliminary injunction, we need not reach the merits of this contention.

represent the production and maintenance employees of Buffalo Forge Company, a manufacturing and sales concern with three plants and offices in or nearby Buffalo, N.Y. The same international union and two other locals represent the company's office clerical and technical employees. On November 16, 1974, in negotiating their first collective bargaining agreement with Buffalo Forge, the unions representing the office clerical and technical employees went out on strike and began picketing all three of the company's Buffalo area sites. On November 18, the production and maintenance employees at one of the plants refused for the day to cross the picket lines. Three days later, the unions representing the production and maintenance employees at the three plants called a work stoppage at all the plants, which gave rise to this suit for damages and injunctive relief by Buffalo Forge against these unions and various named officers and agents of the unions. On December 13, the district court denied the company's request for a preliminary injunction and the instant appeal followed, 28 U.S.C. §1292(a)(1).[5] The work stoppage then terminated on the next regular work day after the district court's order. The controversy remains a live one, however, for the office clerical and technical employees are still on strike and so long as their picketing continues, the work stoppage under review may, as stipulated by the parties, "be resumed at any time in the near future."[6]

[5] §1292. Interlocutory decisions

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

* * *

[6] Joint Appendix at 2a.

In *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195 (1962), the Supreme Court found that §301(a) of the Labor Management Relations Act, which vests jurisdiction in federal district courts over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry representing commerce," in no way further qualifies the preexisting nonabsolute bar established by §4 of the Norris-LaGuardia Act to federal court injunctions "in any case involving or growing out of any labor dispute." The dissenting justices contended that the majority's decision was inconsistent with the strong congressional policy favoring settlement of labor-management differences by arbitration and with *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960), and other recent Supreme Court cases attempting to give full play to that policy. Writing for the *Sinclair Refining* dissenters, Mr. Justice Brennan suggested an accommodation between the two statutory provisions:

> A District Court entertaining an action under §301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.

Sinclair Refining, supra, 370 U.S. 195 at 228 (emphasis in original). Eight years later in *Boys Market,* Mr. Justice Brennan made the above suggestion the core of his majority opinion overruling *Sinclair Refining. Boys Market, supra,* 398 U.S. 235 at 254.

In assessing the extent to which §301(a) modified the anti-injunction policy of Norris-LaGuardia, we base the tenor of our inquiry on the Court's emphasis in *Boys Market* on the narrowness of its holding in favor of injunctive relief. *Id.* at 253. *Compare Emery Air Freight Corp.* v. *Local Union 295,* 449 F.2d 586, 588 (2d Cir. 1971). In narrowly construing the exception to §4 of the Norris-LaGuardia Act carved out by §301(a) in the view of the *Boys Market* Court, then, we take particular note of the various indications in *Boys Market* and in the *Sinclair Refining* dissent upon which the latter drew that only strikes *over a grievance* which the union has agreed to arbitrate are within the scope of the exception. *See, e.g., Boys Market, supra,* 398 U.S. at 248, 254; *Sinclair Refining, supra,* 370 U.S. 195 at 217-18, 224-25, 228. The strike at issue in the instant case is not over a grievance with Buffalo Forge but instead is simply a manifestation of the striking workers' deference to other employees' picket lines.

This distinction is crucial in light of the need, recognized in *Boys Market* and the *Sinclair Refining* dissent, to reconcile the anti-injunction policy of Norris-LaGuardia with the pro-arbitration policy of the later act. If a strike not seeking redress of any grievance is enjoinable, then the policy of Norris-LaGuardia is virtually obliterated. For since a no-strike provision, if not in fact present in the employment contract, will be implied where the agreement sets up mandatory arbitration machinery, *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America* v.

Lucas Flour Co., 369 U.S. 95, 104-06 (1962), it is, as the Fifth Circuit has concluded, "difficult to conceive of any strike which could not be so enjoined." *Amstar Corp.* v. *Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO*, 468 F.2d 1372, 1373 (5th Cir. 1972). Undue expansion of the "narrow" holding in *Boys Market* may be avoided, on the other hand, by proper attention to the actual threat posed by strikes not over grievances with the employer to the policies promoted by §301(a). A strike not seeking to pressure the employer to yield on a disputed issue is not an attempt to circumvent arbitration machinery established by the collective bargaining agreement. Accordingly, it does no violence to the federal pro-arbitration policy to require federal courts to refrain from enjoining such strikes. *See Napa Pittsburgh, Inc.* v. *Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926*, 502 F.2d 321, 330-31 (3d Cir. 1974) *(en banc)* (Hunter, *J.* & Seitz, *C.J.*, dissenting), *cert. denied*, 43 U.S.L.W. 3328 (Dec. 9, 1974); *Inland Steel Co.* v. *Local Union No. 1545, United Mine Workers of America*, 505 F.2d 293, 300-01 (8th Cir. 1974) (Fairchild, *J.*, dissenting).

Since the work stoppage under review is motivated solely by respect for other employees' picket lines[7] and plainly is not aimed at resolving an existing dispute by extra-arbitral means, the district court's order denying a preliminary injunction gave effect to §4 of the Norris-LaGuardia Act without disservice to the policies informing §301(a) of the Labor Management Relations Act. Chief Judge Curtin's application of the two provisions to the context before him

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[7] In the district court, Buffalo Forge claimed that the work stoppage was at least in part a protest against truck driving assignments to the production and maintenance employees. The district court determined that this claim was unsupported by the evidence before it, and the appellant expressly disclaims seeking to disturb the district court's finding on this appeal. Brief for Appellant at 10.

comported with the Supreme Court's direction to district courts in its *Boys Market* opinion to reconcile the two provisions rather than simplistically read a repeal of §4 into the later enactment.

The order of the district court denying a preliminary injunction is therefore affirmed.

Affirmed.

Supreme Court, U. S.
FILED
SEP 26 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1573

UNITED MINE WORKERS OF AMERICA, *et al.*,

Petitioners,

v.

ISLAND CREEK COAL COMPANY,

Respondent.

Supplemental Memorandum in Support Of Petition for Writ of Certiorari

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October Term, 1974

No. 74-1573

UNITED MINE WORKERS OF AMERICA, *et al.*,

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v.

ISLAND CREEK COAL COMPANY,

Respondent.

Supplemental Memorandum in Support Of Petition for Writ of Certiorari

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As stated in the Petition, the Courts of Appeals have divided sharply on the question whether work stoppages arising solely as a result of the presence of a foreign picket line are enjoinable under this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970). At the time the Petition was filed—June 13, 1975—the Courts of Appeals for the Second and Fifth Circuits had held that such work stoppages cannot be enjoined under the authority of *Boys Markets,* while the Courts of Appeals for the Third,

Fourth and Seventh Circuits had held that such stoppages are properly subject to *Boys Markets* restraint.[1]

Since the filing of the Petition, the conflict has been further accentuated by three additional Courts of Appeals decisions. The Sixth Circuit in *Plain Dealer Publishing Co.* v. *Local 53,* 90 LRRM 2110 (C.A. 6, August 15, 1975) has joined the ranks of the Courts holding that foreign picket work stoppages are not enjoinable under *Boys Markets, supra.* The Eighth Circuit held to the contrary in *Valmac Industries, Inc.* v. *Meat Cutters, Local 425,* 89 LRRM 3073 (C.A. 8, July 29, 1975) and *Associated Contractors* v. *Laborers, Local 563,* 89 LRRM 3077 (C.A. 8, July 29, 1975).

With respect to the Seventh Circuit, the Petition called attention to the tension between the decisions in *Inland Steel Co.* v. *Local Union 1545,* 505 F.2d 293 (C.A. 7, 1974) (foreign picket stoppage held enjoinable under *Boys Markets*) and *Gary-Hobart Water Corp.* v. *NLRB,* 511 F.2d 284 (C.A. 7, 1975) (discipline of employee for refusal to cross stranger picket line held to be unfair labor practice in absence of "clear and unmistakable language" demonstrating waiver of the right to honor picket line). In *Hyster Co.* v. *Independent Machine Assn.,* 89 LRRM 2885 (C.A. 7, July 7, 1975), the Seventh Circuit purported to distinguish *Inland Steel* on the basis of the broad reading given by the Court to the arbitration provision involved in that case, and held that *Boys Markets* restraint of the foreign picket stoppage was precluded by *Gary-Hobart* and the Fifth Circuit's decision in *Amstar Corp.* v. *Amalgamated Meat Cutters & Butcher Workers,* 468 F.2d 1372 (C.A. 5, 1972).[2] Thus, there now appears to be a conflict within the Seventh Circuit on the issue posed by this Petition.

[1] See cases cited in Petition for Certiorari, fns. 2-6.

[2] See Petition, fn. 6.

Petitioners submit that this Court has little alternative but to grant the Petition and resolve the proliferating conflict which now involves no less than seven Courts of Appeals.

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Supreme Court, U. S.
FILED
JUL 28 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1573

UNITED MINE WORKERS OF AMERICA; DISTRICT 2, UNITED MINE WORKERS OF AMERICA; and LOCAL NO. 998, UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

ISLAND CREEK COAL COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1573

UNITED MINE WORKERS OF AMERICA; DISTRICT 2, UNITED MINE WORKERS OF AMERICA; and LOCAL NO. 998, UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

ISLAND CREEK COAL COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW AND JURISDICTION

The opinions below and the jurisdictional requisites are adequately set forth in the Petition.

STATUTES INVOLVED

Section 4 of the Norris-LaGuardia Act, 29 U.S.C. §104, Sections 7 and 8(a) of the National Labor Relations Act, 29 U.S.C. §157 and §158(a) and Section 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. §185(a), are set forth in the Petition as Appendix D.

Also involved are Section 203(d) of the Labor-Management Relations Act, 29 U.S.C. §173(d), which provides in pertinent part:

> "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . . ."

and Sections 2 and 8 of the Norris-LaGuardia Act, 29 U.S.C. §102 and §108, attached hereto as Appendix A.

QUESTION PRESENTED

Where a labor agreement contains a grievance/arbitration clause providing for settlement of disputes as to its meaning and application, matters not specifically mentioned and local trouble of any kind, is a dispute as to whether employees may engage in a work stoppage over the presence of non-employee pickets from the same union an arbitrable matter upon which a federal court may order arbitration and enjoin a resulting work stoppage under §301 of the Labor-Management Relations Act of 1947?

STATEMENT OF CASE

Respondent, Island Creek Coal Company ("Island Creek"), owns and operates two large deep mines, the Bird No. 2 and Bird No. 3 Mines, in Somerset County, Pennsylvania. Petitioners, United Mine Workers of America (the "UMW"), its administrative division District 2 and its Local Union No. 998 represent miners at the Bird Mines for collective bargaining purposes. At all times material, Island Creek and the petitioning unions were parties to the National Bituminous Coal Wage Agreement of 1971 (the "1971 Agreement"), covering terms and conditions of employment for employee-members at the Bird Mines.

The 1971 Agreement contains in Article XVII, Settlement of Disputes, a detailed grievance procedure, culminating in compulsory, final and binding arbitration, for resolution of ". . . differences . . . between the Mine Workers and the Employer as to the meaning and application of the provisions of [the] agreement . . .," ". . . differences . . . about matters not specifically men-

tioned in [the] agreement . . ." and ". . . any local trouble of any kind [arising] at the mine . . . ." Article XX, Maintain Integrity of Contract, further provides that ". . . all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Disputes' article of this agreement unless national in character . . . ."

This case has its genesis in a widespread April 1974 work stoppage by UMW District 2 members in protest of an umpire's handling of a discharge arbitration at Florence Mining Company's No. 2 Mine in western Pennsylvania. (Pet. App. C pp. 14-15). On April 11, 1974, non-employee UMW pickets from other mines in the area appeared at the common entrance to the Bird Mines and requested Island Creek employees to join the strike. Local 998 employee-members refused to report for work. (Pet. App. C p. 15).

On April 12, 1974, Island Creek filed a complaint in the district court under Section 301 of the Labor-Management Relations Act (29 U.S.C. §185), to enjoin the work stoppage and compel arbitration of the underlying dispute as to whether employee-members of Local 998 were required to cross the picket lines and report for work. A Temporary Restraining Order issued and, after hearing, Preliminary Injunction was entered on April 17, 1974. (Pet. App. B, C pp. 11-18).

In its Memorandum and Order, the district court, upon the basis of the evidence, found that the refusal of plaintiff's employees to cross picket lines was an arbitrable dispute under the contract; that the work stoppage was, therefore, a violation of the agreement; and that Island Creek was irreparably injured by continued closing of the mines. (Pet. App. C pp. 14-18).

As it had during hearing, the district court took notice of the presence of work stoppages at many other mines in western Pennsylvania and its knowledge of and participation in related cases arising from this widespread unrest. The district court concluded that the solution to the problem lay in the ability of the International Union to enforce the terms and conditions of the contract and directed petitioners to do so by refraining from work stoppages and utilizing the contract grievance/arbitration procedures in compliance with these terms and conditions. (Pet. App. C p. 17).

The Court of Appeals for the Third Circuit, applying the presumption of arbitrability of *Steelworkers v. Warrior & Gulf,* 363 U.S. 574 (1960), and its specific application to the National Bituminous Coal Wage Agreement in *Gateway Coal Company v. United Mine Workers,* 414 U.S. 368 (1974), found the employee-members' refusal to work when fellow UMW pickets were present an arbitrable issue under the broad Settlement of Disputes provisions of the 1971 Agreement as to which the union had an implied obligation not to strike. (Pet. App. A pp. 1-10).

The Circuit Court then affirmed the granting of injunctive relief upon the basis of *Boys Markets, Inc. v. Retail Clerks Union,* 398 U.S. 235 (1970), while reemphasizing its holding bottomed upon the usual breadth of the agreement's grievance/arbitration clause. (Pet. App. A. p. 7).

Timely petition for rehearing and suggestion for rehearing *en banc* was denied. Petition for Certiorari followed.

REASONS FOR DENYING THE WRIT

A. The Decision Below is Consistent with Federal Labor Policy and Applicable Decisions of this Court.

The decision below, resting upon the 1971 Agreement's sweeping Settlement of Disputes provision, is clearly correct and consistent with the decisions of this Court in *Boys Markets, Inc. v. Retail Clerks Union,* 398 U.S. 235 (1970), and *Gateway Coal Company v. United Mine Workers,* 414 U.S. 368 (1974).

Federal labor policy is premised upon the principle that industrial stability is best fostered by voluntary settlement of labor disputes without resort to self-help and industrial strife. Section 203(d) of the Labor-Management Relations Act of 1947, 29 U.S.C. §173(d), manifests the congressional resolve that:

> "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . ."

Where suit is brought to compel arbitration under Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185, under *Steelworkers v. Warrior & Gulf Co.,* 363 U.S. 574, 582-583 (1960):

> ". . . An order to arbitrate the particular grievance should not be denied unless it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

The 1971 Agreement's Settlement of Disputes provision provides for final and binding arbitration of disputes "as to the meaning and application of the provisions of [the] agreement," disputes "about matters not specifically mentioned in [the] agreement" and "any local trouble of any kind aris[ing] at the mine." In Article XX the parties "agree and affirm . . . that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Disputes' article . . .," excepting only disputes "national in character" from the arbitration obligation.

As in *Operating Engineers v. Flair Builders, Inc.,* 406 U.S. 487, 491 (1972), "[t]here is nothing to limit the scope of this coverage or to except any dispute or class of disputes from arbitration." Accordingly, this Court has held that the arbitration obligation of the National Bituminous Coal Wage Agreement "gives rise to an implied no-strike duty." *Gateway Coal Company v. United Mine Workers,* 414 U.S. 368 (1974).

The controversy as to whether Island Creek employees violated this implied no-strike obligation by engaging in a work stoppage over the presence of fellow UMW pickets at the mine is clearly an arbitrable matter under the 1971 Agreement.

Local 998 members could—and should—have reported for work and then filed a grievance disputing their contractual obligation to do so in accord with the "obey now—grieve later" tenet which prevades the common law of arbitration.[1] Elkouri & Elkouri, *How Arbitration Works,* 154-159 (3rd Ed., 1973).

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1. Significantly, the record indicates that all Local 998 officers who testified conceded on cross-examination that the labor agreement required them to cross the picket line and report for work. (R. 112a, 130a, 134a).

This being the case, the district court clearly had authority under *Boys Markets v. Retail Clerks,* 398 U.S. 235 (1970), to enjoin the work stoppage and to order arbitration of the controversy concerning Local 998's refusal to cross the picket lines.

Boys Markets contemplates that issuance of injunctive relief is within the sound discretion of the trial judge when a dispute "arising over the application or interpretation of an existing collective bargaining agreement" (29 U.S.C. §173(d)) is subject to adjustment and arbitration under the agreement and injunctive relief is warranted upon ordinary principles of equity. 398 U.S. at 254.

While Petitioners argue that under *Boys Markets* the granting of injunctive relief is proper only when a work stoppage is literally "over a grievance,"[2] this narrow position is inconsistent with the firmly established arbitration maxim of "obey now—grieve later" and this Court's finding that a later action for damages "is no substitute for an immediate halt to an illegal strike . . ." and "would only tend to aggravate industrial strife and delay an early resolution of the difficulties between employer and union." 398 U.S. at 243.

Petitioners' contrary position, with its corollary that the propriety of employee-members honoring their

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2. This argument for grant of certiorari has been previously before this Court—and rejected—in *Pilot Freight Carriers v. Teamsters,* 497 F.2d 311 (4th Cir. 1974), *cert. denied,* 419 U.S. 869 (1974); *Wilmington Shipping Co. v. Longshoremen,* ..... F.2d ....., 86 LRRM 2846 (4th Cir. 1974), *cert. denied,* 419 U.S. 1022 (1974); and *NAPA Pittsburgh v. Automotive Chauffeurs,* 502 F.2d 321 (3rd Cir. 1974), *cert. denied,* 419 U.S. 1049 (1974).

fellow members' picket lines is unreviewable by court or board until a later action for damages or proceedings arising from possible discipline of the employees involved, is nothing more than a request for judicial sanction of a union's avoidance of bargained-for no-strike pledges through the subterfuge of non-employee pickets. Such withholding of effective judicial relief in an entire category of premeditated work stoppages "not only runs counter to our national policy of promoting labor stability but opens new and hazardous avenues in labor relations for unrest and strikes." *Gateway Coal Co. v. United Mine Workers,* 466 F.2d 1157, 1162 (3rd Cir. 1972) (Rosenn, J. dissenting).

This result is contrary to the congressional policy set forth in Section 203(d) of the Labor-Management Relations Act and is neither contemplated nor required by the Norris-LaGuardia Act—which itself manifests in Section 8 a policy determination that labor disputes should be peacefully settled through voluntary adjustment and arbitration. See, 29 U.S.C. §108; *Boys Markets, supra,* 398 U.S. at 242.

The work stoppage of Local 998 employees here had the practical and intended effect of pressuring Island Creek to yield its position on the arbitrable dispute concerning employees' duty to report for work despite the presence of non-employee UMW pickets, and thus injunctive relief properly issued to preserve the integrity of the labor agreement and the arbitral process.

The holding below correctly enforces the parties' bargained-for obligation while accommodating the policies underlying Sections 203(d) and 301 of the Labor-Management Relations Act with the anti-injunction provisions of Norris-LaGuardia.

B. The Decision Below is Not in Conflict With Any Decision of Another Court of Appeals or the National Labor Relations Board.

The precise issue here presented, whether a federal court, under *Boys Markets* and the 1971 Agreement, may order arbitration and enjoin a work stoppage of mine worker employees over the presence of non-employee UMW pickets at the mine, has been uniformly answered in the affirmative by the Third,[3] Fourth[4] and Seventh[5] circuits on similar facts.

Despite this uniformity of the Circuits, Petitioners allege that the decision below involves "the question of enjoinability of foreign-picket work stoppages" and conflicts with the Fifth Circuit's decision in *Amstar Corporation v. Amalgamated Meat Cutters,* 468 F.2d 1372 (5th Cir. 1972), the Second Circuit's decision in *Buffalo Forge Co. v. Steelworkers,* ..... F.2d ....., 89 LRRM 2303 (1973), and the NLRB holdings in *Gary-Hobart Water Corp.,*[6] and *Keller-Crescent Co.,*[7] *Div. of Mosler.*

Review of these decisions reveals that there is no direct conflict in fact or law, and that the approach of the Court below is consistent with that of the NLRB.

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3. *Island Creek Coal Company v. United Mine Workers,* 507 F.2d 650 (3rd Cir. 1975).

4. *Armco Steel Corp. v. United Mine Workers,* 505 F.2d 1129 (4th Cir. 1974).

5. *Inland Steel Co. v. Local 1545, United Mine Workers,* 505 F.2d 293 (7th Cir. 1974).

6. 210 NLRB No. 87, 86 LRRM 1210, *enf'd sub nom. Gary-Hobart Water Corp. v. NLRB,* 511 F.2d 284 (7th Cir. 1975).

7. 217 NLRB No. 100, 89 LRRM 1201 (1975).

The Fifth Circuit's reasoning in *Amstar,* decided prior to this Court's holding in *Gateway,* commences with refusal to apply the *Steelworkers Trilogy's*[8] broad presumption of arbitrability and concludes with a myopic misreading of *Boys Markets*—that only a strike literally "over a grievance" may be enjoined—which ignores both the language of §203 of the Labor-Management Relations Act and the factual underpinnings of *Boys Markets* and *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195 (1962).[9]

Consistent with §203(d) and the national policy of peaceful resolution of labor disputes, all that *Boys Markets* requires is that the dispute be subject to adjustment and arbitration under the labor agreement. See, pp. 8-9, *supra.*

Buffalo Forge compounds the errors of *Amstar* by relying so blindly upon the "over a grievance" language that the critical finding—whether the picket line dispute is or is not arbitrable—was never made.[10]

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8. *United Steelworkers v. American Mfg. Co.,* 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1960).

9. The quoted language, appearing at 398 U.S. 254, is from Justice Brennan's dissenting opinion in *Sinclair* (370 U.S. 195 at 228).

10. The Second Circuit reasoned that ". . . it does no violence to the federal pro-arbitration policy to require federal courts to refrain from enjoining [strikes not seeking to pressure the employer to yield on a disputed issue]," (Petition, App. 28), but then failed to apply it reasoning to the facts before it, where the strike clearly sought to pressure the employer to yield on the disputed issue of whether employees were required by contract to cross the picket lines, report for work and grieve through the applicable contract provisions.

Neither *Amstar* nor *Buffalo Forge* involved labor agreements which contained sweeping grievance/arbitration provisions like those found in the 1971 Agreement, nor were the pickets there, as here, members of an international union signatory to the same national agreement.[11]

The National Labor Relations Board holdings cited by Petitioners are inapposite upon the same reasoning.

Although *Gary-Hobart* involved refusal of employees to cross picket lines, the issue was not arbitrability—and hence enjoinability—of a dispute under §301, but rather whether the employer violated §§ 8(a)(1) and (3) of the National Labor Relations Act by infringing upon that statute's §7 right of "mutual aid or protection."[12]

Significantly, the Board initially deferred to arbitration, 200 NLRB No. 98, 81 LRRM 1564 (1972), and decided the case only when the employer refused to arbitrate. Then, in holding on the merits that there had been

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11. Petitioners' characterization of the picket line at Island Creek's Bird Mines as "foreign" is clearly inappropriate as to Petitioners' District 2 and the International Union, whose members constituted the picket line. (R. 103a, 109a, 133a, 146a).

12. §7 has been judicially interpreted to confer an implied right to honor picket lines in circumstances where (1) the picket line is not unlawful, *AFL v. Swing*, 312 U.S. 321 (1940), (2) the employer lacks legitimate and substantial business reasons for taking action against the employees involved, *Redwing Carriers*, 137 NLRB 1545, *enforced* 325 F.2d 1011 (D.C. Cir. 1963); *Cooper Thermometer*, 154 NLRB 502 (1965), or (3) the collective bargaining agreement does not contain express or implied obligations to the contrary, *NLRB v. Rockaway News Supply Co.*, 345 U.S. 71 (1953).

no contractual waiver of picket line rights, both the Board and the Seventh Circuit specifically cited and distinguished cases involving the National Bituminous Coal Wage Agreement "on the basis of the very broad arbitration clause included in the contract which governed disputes . . ." 210 NLRB No. 87, 86 LRRM at 1214. See also *Gary-Hobart Water Corp. v. NLRB, supra,* 511 F.2d at 288, 289.

Contrary to Petitioners' assertions, the NLRB's reasoning in picket-line cases arising under the National Labor Relations Act emphasizes the correctness of the holding below and is consistent with ***Boys Markets, Gateway*** and the holdings in ***Armco Steel Corp. v. United Mine Workers, supra,*** and ***Inland Steel Co. v. United Mine Workers, supra.***

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit should be denied.

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APPENDIX A

Section 102 of the Norris-LaGuardia Act, 29 U.S.C. §102, provides in pertinent part:

"§102. Public policy in labor matters declared

"In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted."

Appendix A.

Section 108 of the Norris-LaGuardia Act, 29 U.S.C. §108, provides in pertinent part:

> "§108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief
>
> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

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Petitioners,

v.

ISLAND CREEK COAL COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR REHEARING

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR REHEARING

The petitioners herein respectfully move this Court (1) to vacate its denial of the petition for a writ of certiorari and (2) to hold consideration of the petition in abeyance pending disposition of *Buffalo Forge Co.* v. *Steelworkers,* No.

75-339. As grounds for this motion, petitioners state the following:

> THIS COURT HAS NOW GRANTED CERTIORARI IN BUFFALO FORGE CO. v. STEELWORKERS, NO. 75-339, TO CONSIDER SUBSTANTIALLY THE SAME QUESTION PRESENTED BY THE PETITION FOR WRIT OF CERTIORARI HEREIN.

On October 6, 1975, this Court denied the petition for a writ of certiorari in the instant case, with Mr. Justice Douglas and Mr. Justice Stewart noting that they would grant the requested writ. However, on October 20, 1975, this Court granted certiorari in No. 75-339, *Buffalo Forge Co.* v. *Steelworkers,* to consider substantially the same question presented by the petition herein.

In *Buffalo Forge,* the Second Circuit considered the question of whether a federal district court can issue a back-to-work injunction, "if a union enters into a collective bargaining agreement establishing a mandatory arbitration procedure and including a no-strike clause" and then honors "another union's" picket line. 517 F.2d at 1208. The Second Circuit held that the Norris-LaGuardia Act prohibited injunctive relief, and this Court has granted certiorari to review that holding. Similarly, the petition in the instant case presents the question of whether a federal district court can issue a back-to-work injunction, "if a union enters into a collective bargaining agreement establishing a mandatory arbitration procedure [but not a no-strike clause] and then engages in a work stoppage solely out of deference to a foreign picket line." Petition, p. 2. The court below held that the Norris-LaGuardia Act did not prohibit injunctive relief.

Petitioners do not ask this Court to immediately grant certiorari and hear this case simultaneously with *Buffalo Forge*. They ask only that their petition be held in abeyance pending disposition of another case presenting substantially the same issue, and then dealt with in light of that disposition, in line with the usual practice of this Court.

CONCLUSION

For the reasons set forth above, petitioners pray that this Court vacate its denial of the petition for a writ of certiorari and hold consideration of the petition in abeyance pending disposition of No. 75-339.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

As attorney for the petitioners, I hereby certify that this petition for rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in Rule 58(2).

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